

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs November 24, 2004

**STATE OF TENNESSEE DEPARTMENT OF CHILDREN'S SERVICES v.
D.H.H.**

**Appeal from the Juvenile Court for Anderson County
No. J-21691 Patricia Hess, Judge**

No. E2004-01691-COA-R3-PT - FILED DECEMBER 16, 2004

The issue in this case is whether the trial court erred in terminating the parental rights of the biological father of a minor child. We find that sufficient grounds for termination of parental rights were established under Tenn. Code Ann. § 36-1-113(g)(4) in that a prior order of the trial court includes a finding that the father engaged in severe abuse of the child. Upon these grounds and the trial court's further finding that termination of the father's parental rights is in the child's best interest, we affirm the judgment of the trial court and remand.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile Court Affirmed; Cause Remanded

SHARON G. LEE, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and CHARLES D. SUSANO, JR., J., joined.

Brian J. Hunt, Clinton, Tennessee, for the Appellant, D.H.H.

Paul G. Summers, Attorney General and Reporter, and Elizabeth C. Driver, Assistant Attorney General, Nashville, Tennessee, for the Appellee, State of Tennessee Department of Children's Services.

OPINION

S.H., the child in this termination case was born on May 22, 2003. D.H. is her biological father and the Appellant herein. On July 13, 2003, A.S., the child's biological mother took the child to East Tennessee Children's Hospital emergency room in Knoxville for treatment of injuries the child allegedly sustained while in the care of D.H. D.H. alleges that these injuries resulted when "he fell down the steps with the child" on that date. Skeletal x-rays taken of S.H. were subsequently analyzed by pediatric radiologist Dr. Sidney Roberts who determined that the child had suffered four fractures of the right leg, two fractures of the left leg, four fractures of the right ribs and five fractures of the left ribs. In Dr. Roberts' opinion, the leg fractures occurred on or about July 13, 2004, while

the rib fractures occurred three to four weeks prior to that date. It was Dr. Roberts' conclusion that all of these injuries were "non-accidental" and that the leg fractures would not have been caused by a fall as alleged by D.H.

On July 28, 2003, the Appellee, State of Tennessee, Department of Children's Services, filed a petition for temporary custody of S.H. upon the following assertion:

It is upon Petitioner's information and belief that [S.H.] is a dependent and neglected child within the meaning of the law in that she was recently admitted to Children's Hospital in Knoxville, Tennessee for possible broken bones. The child was determined by medical personnel at Children's Hospital to have numerous bone fractures, both older fractures and more recent ones, with said fractures appearing to medical personnel to be the result of physical abuse.

This petition was granted by order entered July 28, 2003. Thereafter, on September 15, 2003, a thirty-day adjudicatory hearing was held and the court granted DCS temporary custody of S.H. upon a finding by clear and convincing evidence that she was a dependent and neglected child. On October 14, 2003, DCS filed a motion requesting that the court enter a finding of severe child abuse under Tenn. Code Ann. § 37-1-102(21)(A). On April 8, 2004, DCS filed its petition to terminate the parental rights of both parents citing Tenn. Code Ann. § 36-1-113, *inter alia*, as supporting statutory authority.

DCS's motion for finding of severe abuse came on for hearing on May 13, 2004, and by order entered June 17, 2004, the court, *inter alia*, set forth its finding that "pursuant to T.C.A. § 37-1-102(21)(a), this child had great bodily harm and that there was 'knowing exposure' or 'failure to protect' and makes a finding of severe abuse against the father and against the mother in that the mother has failed to protect and not resolved the discrepancy over time."

The hearing on DCS's petition to terminate parental rights was held on June 17, 2004, and on August 20, 2004, the trial court entered its order granting the petition noting therein that at the hearing on May 13, 2004, D.H. and A.S. were found to have committed severe child abuse against S.H.

D.H. now appeals the trial court's decree terminating his parental rights¹ and presents the following issues for our review:

1) Is there sufficient evidence in this case to establish statutory grounds for termination of parental rights?

2) Is there sufficient evidence in this case to support the trial court's finding that termination of parental rights is in the best interest of S.H.?

¹ A.S. does not appeal the decree as to termination of her parental rights.

In a non-jury case such as this one we review the record *de novo* with a presumption of correctness as to the trial court's determination of facts and we must honor those findings unless there is evidence which preponderates to the contrary. Tenn. R. App. P. 13(d); *Union Carbide v. Huddleston*, 854 S.W.2d 87, 91 (Tenn. 1993). The trial court's conclusions of law are accorded no such presumption. *Campbell v. Florida Steel Corp.*, 919 S.W.2d 26, 35 (Tenn. 1996); *Presley v. Bennett*, 860 S.W.2d 857, 859 (Tenn. 1993).

It is well-settled that "parents have a fundamental right to the care, custody, and control of their children." *In re Drinnon*, 776 S.W.2d 96, 97 (Tenn. Ct. App. 1988) (citing *Stanley v. Illinois*, 405 U.S. 645 (1972)). However, this right is subject to termination provided there is clear and convincing evidence justifying such termination under applicable statutory authority. *Santosky v. Kramer*, 455 U.S. 745 (1982). In granting a petition to terminate parental rights, the court may rely upon any legitimate ground alleged in the petition and it is not required that the petitioner prove all grounds alleged. *In re C.W.W.*, 37 S.W.3d 467, 473-474 (Tenn. Ct. App. 2000). If there is clear and convincing evidence in the record which supports any one of the grounds alleged in the petition to terminate then we must affirm the trial court's decision. *Id.* at page 473-474.

In *In re M.J.B.*, 140 S.W.3d 643, 653 (Tenn. Ct. App. 2004) we reiterated the prerequisites to the termination of parental rights as follows:

Termination proceedings in Tennessee are governed by statute. Parties who have standing to seek the termination of a biological parent's parental rights must prove two things. First, they must prove the existence of at least one of the statutory grounds for termination. Tenn. Code Ann. § 36-1-113(c)(1); *In re D.L.B.*, 118 S.W.3d 360, 367 (Tenn. 2003); *Jones v. Garrett*, 92 S.W.3d [835] at 838. Second they must prove that terminating the parent's parental rights is in the child's best interests. Tenn. Code Ann. § 36-1-113(c)(2); *In re A.W.*, 114 S.W.3d 541, 545 (Tenn. Ct. App. 2003); *In re C.W.W.*, 37 S.W.3d 467, 475-476 (Tenn. Ct. App. 2000); *In re M. W. A., Jr.*, 980 S.W.2d 620, 622 (Tenn. Ct. App. 1998).

We first address the issue of whether there was clear and convincing evidence to support a ground for termination of parental rights in this case.

Tenn. Code Ann. § 36-1-113(g)(4) sets forth one of the statutory grounds for termination of parental rights as follows:

The parent or guardian has been found to have committed severe child abuse as defined in § 37-1-102, under any prior order of a court or is found by the court hearing the petition to terminate parental rights or the petition for adoption to have committed severe child abuse against the child who is the subject of the petition or against any sibling or half-sibling of such child, or any other child residing temporarily or permanently in the home of such parent or guardian;

(Emphasis added.)

As we have noted, on June 17, 2004, the trial court entered an order finding that D.H. had committed severe child abuse against S.H. pursuant to Tenn. Code Ann. § 36-1-113(g)(4), this order and finding therein constitutes a ground for termination of D.H.'s parental rights. Accordingly, it is our determination that there was clear and convincing evidence to support the trial court's decree of termination.

In his supplemental brief D.H. contends "that there was no clear and convincing evidence at the May 13, 2004 hearing that he had committed severe child abuse." D.H. argues that, although the parties stipulated to Dr. Roberts' opinion that the injuries sustained by S.H. were typical of non-accidental trauma, there was no proof that D.H. committed the abuse. It is our determination that the record presents clear and convincing circumstantial evidence that S.H. was abused by one or the other of her parents, if not both, and a finding of severe abuse is appropriate against both parents when one parent perpetrates the abuse and the other fails to protect the child. *State ex rel D.L. (P.)C.*, C/A No. M2002-00088-COA-R3-CV, 2003 WL 22955942 (Tenn. Ct. App. M.S., filed December 15, 2003). In any event, the hearing on May 13, 2004, was not the hearing on the petition to terminate, but rather the hearing on DCS's motion for a finding of severe child abuse which hearing resulted in the trial court's order of June 17, 2004. That order was not appealed and is no longer subject to review by this Court.

The other issue we address is whether sufficient evidence was presented to support the trial court's finding that termination of parental rights is in the child's best interest.

D.H. asserts that "[t]he record is lacking of any expert witness testimony that the continuation of the parent-child relationship would be psychologically, physically, or emotionally detrimental to the child." Accordingly, D.H. maintains, DCS has failed to meet its burden of showing that termination of parental rights is in S.H.'s best interest. D.H. cites no supporting authority for his argument that expert testimony of this sort is a pre-requisite to a finding that termination of parental rights is in a child's best interest. Our review of the record reveals that the order terminating parental rights merely states "[t]hat it is in the best interest of [S.H.] and the public that all of [the parents] parental rights to this child be terminated..." The trial court does not specify its reasons for finding that termination is in S.H.'s best interest and there is no statutory requirement that the court set forth its reasons. *In the Matter of : B.G.J.*, C/A No. E2003-02475-COA-R3-PT, 2004 WL 1906446 (Tenn. Ct. App. E.S. August 26, 2004). It is our conclusion that the trial court's prior finding of severe abuse provided a proper basis for its subsequent finding that termination of parental rights was in the child's best interest in this case.

For the foregoing reasons we affirm the judgment of the trial court and remand for further action consistent with this opinion. The costs on appeal are assessed to the Appellant, D.H.H. and his surety, for which execution may issue if necessary.

SHARON G. LEE, JUDGE